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**Thursday  
September 29, 1988**

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**Part VI**

**Information Security  
Oversight Office**

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**32 CFR Part 2003**

**National Security Information; Standard  
Forms; Final Rule**

**Final Rule**

**INFORMATION SECURITY OVERSIGHT OFFICE****32 CFR Part 2003****National Security Information; Standard Forms****AGENCY:** Information Security Oversight Office (ISOO).**ACTION:** Final rule.

**SUMMARY:** This amendment to 32 CFR 2003.20 provides for: (1) the issuance and use of Standard Form 312, "Classified Information Nondisclosure Agreement" (SF 312); and (2) the modification of Paragraph 1 of all previously executed copies of Standard Form 189, "Classified Information Nondisclosure Agreement" (SF 189), to strike the word "classifiable" and to substitute in its place language that clarifies the scope of "classified information" as used in those agreements. From the effective date of this rule, the SF 312 shall be used in lieu of its predecessor nondisclosure agreements, SF 189 and Standard Form 189-A, "Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government)" (SF 189-A). ISOO is issuing the SF 312 as a preferred means of clarifying the scope of some language in the SF 189 and the SF 189-A that has been at issue in litigation concerning the constitutionality and legality of certain nondisclosure agreements, including the SF 189. Notwithstanding the changes in some of its language, the SF 312 does not in any way differ from its predecessor nondisclosure agreements with respect to the substance of the information that each is intended to protect. ISOO is clarifying executed copies of the SF 189 to comply with a recent order of the United States District Court for the District of Columbia, to take account of statutory provisions that reflect congressional concern regarding possible ambiguity of the word "classifiable," and to make the language of the SF 189 more consistent with the language of the SF 312 and the SF 189-A.

**EFFECTIVE DATE:** September 29, 1988.**FOR FURTHER INFORMATION CONTACT:** Steven Garfinkel, Director, ISOO, 202-535-7251.

**SUPPLEMENTARY INFORMATION:** This amendment to 32 CFR Part 2003 is issued pursuant to section 5.2(b)(7) of Executive Order 12356, "National Security Information," which grants the Director of ISOO the authority to issue standardized security forms, and Paragraph 1 of National Security Decision Directive 84, March 11, 1983,

which directs ISOO to issue a standardized nondisclosure agreement to be signed as a condition of access by all persons cleared for access to classified information. In fulfilling this requirement, ISOO has previously issued two nondisclosure agreements: SF 189, "Classified Information Nondisclosure Agreement," in September 1983; and SF 189-A, "Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government)," in November 1986.

On December 29, 1987, ISOO directed agencies to halt further implementation of the SF 189 and SF 189-A as a result of the enactment of section 630 of the Treasury, Postal Service, and General Appropriations Act, 1988, which was part of the Omnibus Continuing Resolution for Fiscal Year 1988 (Pub. L. 100-202). On May 27, 1988, in litigation primarily involving the constitutionality and legality of the SF 189, the United States District Court for the District of Columbia ruled that Section 630 of Public Law 100-202 is unconstitutional (*National Federation of Federal Employees v. United States, et al.*, Civil Action No. 87-2284-OG; *American Federation of Government Employees, et al. v. Garfinkel, et al.*, Civil Action No. 87-2412-OG; *American Foreign Service Association, et al. v. Garfinkel, et al.*, Civil Action No. 88-0440-OG). In a subsequent ruling of July 28, 1988, in the first two of the above-captioned cases, the same court upheld the constitutionality and legality of the SF 189. However, the court also ruled that in order to bring the scope of the word "classifiable" within constitutional limits, the SF 189 must be modified, either (a) by providing each signatory a copy of ISOO's definition of "classifiable information," as published in 52 FR 48367 on December 21, 1987; or (b) by striking the word from executed copies of the agreement.

Notwithstanding these rulings upholding the validity of the predecessor nondisclosure agreements, ISOO has concluded that, in lifting the moratorium on the execution of required nondisclosure agreements, a preferred means to deal with the perceived ambiguities in their language is the issuance of a new nondisclosure agreement, the SF 312. The SF 312 avoids as many of these perceived problem areas as possible without changing the substance of the classified information that the nondisclosure agreement is intended to protect. In issuing the SF 312, ISOO does not seek its execution by every cleared Government or industry employee who has already executed an SF 189 or an SF 189-A, since these total over two million

individuals. However, the rule provides that every individual who previously signed an SF 189 or SF 189-A may substitute a signed copy of the SF 312 at his or her own choosing. Also, through this rule ISOO is instructing agencies to enforce the predecessor agreements in a manner that is fully consistent with the enforcement of the SF 312. To help achieve greater consistency, ISOO is complying with the court order by opting to strike the word "classifiable" from the SF 189, while substituting language that clarifies the scope of "classified information," as used in the agreement. This language is taken from the definition of "classifiable" previously published in the Code of Federal Regulations, and adjudged by the District Court to bring the definition within constitutional and legal standards. ISOO has not included the word "classifiable" in the SF 312, and did not previously include it in the SF 189-A, although these agreements are both intended to protect the same information protected by the SF 189. The word "classifiable" had been included in the SF 189 not to introduce concepts separate and distinct from classified information, but to emphasize the need to protect unmarked classified information and information in the process of a classification determination. Therefore, striking the word from the SF 189 is the more consistent of the two options presented by the court, while its concepts remain protected within the scope of classified information.

Concurrent with the issuance of the SF 312, by a letter of this date the ISOO Director is instructing the senior official for information security oversight in each agency that creates or handles classified information to lift the current moratorium on the execution of the "Classified Information Nondisclosure Agreement," imposed by letter of December 29, 1987; and to lift the moratorium on the withdrawal of access to classified information and security clearances, imposed by letter of August 21, 1987, for those cleared persons who refuse to sign the SF 312.

Before issuing the SF 312, ISOO submitted drafts for review and comment to the executive branch agencies most affected by it; to seven Committees or Subcommittees of the Congress most involved with the subject of classified information; and to selected interest groups actively concerned with this subject. ISOO has considered those comments that it has received in response to its solicitations, and, when ISOO concluded that suggested changes were warranted, it has incorporated

these into the SF 312 or this implementing rule. As required by National Security Decision Directive 84, the Department of Justice has concluded that the SF 312 is enforceable in a civil action brought by the United States.

This is not a major rule for purposes of Executive Order 12291.

#### List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

#### PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

#### Subpart B—Prescribed Forms

2. Section 2003.20 is revised to read as follows:

**§ 2003.20 Classified Information Nondisclosure Agreement: SF 312; Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189-A.**

(a) SF 312, SF 189, and SF 189-A are nondisclosure agreements between the United States and an individual. The prior execution of at least one of these agreements, as appropriate, by an individual is necessary before the United States Government may grant that individual access to classified information. From the effective date of this rule, September 29, 1988, the SF 312 shall be used in lieu of both the SF 189 and the SF 189-A for this purpose. In any instance in which the language in the SF 312 differs from the language in either the SF 189 or SF 189-A, agency heads shall interpret and enforce the SF 189 or SF 189-A in a manner that is fully consistent with the interpretation and enforcement of the SF 312.

(b) All employees of executive branch departments, and independent agencies or offices, who have not previously signed the SF 189, must sign the SF 312 before being granted access to classified information. An employee who has previously signed the SF 189 is permitted, at his or her own choosing, to substitute a signed SF 312 for the SF 189. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel

requiring access to classified information in the performance of their duties, who have not previously signed either the SF 189 or the SF 189-A, must sign the SF 312 before being granted access to classified information. An employee who has previously signed either the SF 189 or the SF 189-A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189-A. In these instances, agencies, with the cooperation of the pertinent contractor, licensee or grantee, shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(d) Agencies may require other persons, who are not included under paragraphs (b) or (c) of this section, and who have not previously signed either the SF 189 or the SF 189-A, to execute SF 312 before receiving access to classified information. A person in such circumstances who has previously signed either the SF 189 or the SF 189-A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189-A. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(e) The use of the "Security Debriefing Acknowledgement" portion of the SF 312 is optional at the discretion of the implementing agency.

(f) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting as a designated agent of the United States, may witness the execution of the SF 312 by another non-Government employee, and may accept it on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 312 by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official or, for non-Government employees only, a designated agent of the United States subsequently accepts by signature the SF 312 on behalf of the United States.

(g) The provisions of the SF 312, the SF 189, and the SF 189-A do not supersede the provisions of section 2302, Title 5, United States Code, which pertain to the protected disclosure of information by Government employees, or any other laws of the United States.

(h)(1) *Modification of the SF 189.* The second sentence of Paragraph 1 of every executed copy of the SF 189 is clarified to read:

As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security.

(2) *Scope of "classified information".* As used in the SF 312, the SF 189, and the SF 189-A, "classified information" is marked or unmarked classified information, including oral communications; and unclassified information that meets the standards for classification and is in the process of a classification determination, as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain information while a classification determination is pending. "Classified information" does not include unclassified information that may be subject to possible classification at some future date, but is not currently in the process of a classification determination.

(3) *Basis for liability.* A party to the SF 312, SF 189 or SF 189-A may be liable for disclosing "classified information" only if he or she knows or reasonably should know that: (i) The marked or unmarked information is classified, or meets the standards for classification and is in the process of a classification determination; and (ii) his or her action will result, or reasonably could result in the unauthorized disclosure of that information.

In no instance may a party to the SF 312, SF 189 or SF 189-A be liable for violating its nondisclosure provisions by disclosing information when, at the time of the disclosure, there is no basis to suggest, other than pure speculation, that the information is classified or in the process of a classification determination.

(i) *Points of clarification.* (1) As used in Paragraph 3 of SF 189 and SF-189-A, the word "indirect" refers to any situation in which the knowing, willful or negligent action of a party to the agreement results in the unauthorized disclosure of classified information even though the party to the agreement does not directly communicate, deliver or

transmit classified information to a person who is not authorized to receive it.

(2) As used in Paragraph 7 of SF 189, "information" refers to "classified information," exclusively.

(3) As used in the third sentence of Paragraph 7 of SF 189 and SF 189-A, the words "all materials which have, or may have, come into my possession," refer to "all classified materials which have or may come into my possession," exclusively.

(j) Each agency must retain its executed copies of the SF 312, SF 189, and SF 189-A in file systems from which the agreements can be expeditiously retrieved in the event that the United States must seek their enforcement. The

copies or legally enforceable facsimiles of them must be retained for 50 years following their date of execution. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractor, licensee or grantee shall deliver the SF 312, SF 189, or SF 189-A of that employee to the Government agency primarily responsible for his or her classified work.

(k) Only the National Security Council may grant an agency's request for a waiver from the use of the SF 312. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director

of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has previously received a waiver from the use of the SF 189 or the SF 189-A need not seek a waiver from the use of the SF 312.

(l) The national stock number for the SF 312 is 7540-01-280-5499.

Dated: September 23, 1988.

**Steven Garfinkel,**

*Director, Information Security Oversight Office.*

[FR Doc. 88-22232 Filed 9-26-88; 8:45 am]

BILLING CODE 6820-KC-M

**CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT**

AN AGREEMENT BETWEEN

AND THE UNITED STATES

(Name of Individual - Printed or typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in Sections 1.1(c) and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of the information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and \*952, Title 18, United States Code, \*the provisions of Section 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

(Continue on reverse)

10. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me Sections 641, 793, 794, 798, and \*952, Title 18, United States Code, \*Section 783(b), Title 50, United States Code, the Intelligence Identities Protection Act of 1982, Executive Order 12356 or its successor, and Section 2003.20, Title 32, Code of Federal Regulations, so that I may read them at this time, if I so choose.

SIGNATURE	DATE	SOCIAL SECURITY NUMBER (See Notice below)
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ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER)  
(Type or print)

WITNESS		ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.		THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE	DATE	SIGNATURE	DATE
NAME AND ADDRESS (Type or print)		NAME AND ADDRESS (Type or print)	

### SECURITY DEBRIEFING ACKNOWLEDGMENT

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE
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NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS
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**NOTICE:** The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above or 2) determine that your access to the information indicated has terminated. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations, or possibly result in the denial of your being granted access to classified information.

\* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.